# UNITED STATES OF AMERICA FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;

Nora Mead Brownell, Joseph T. Kelliher,

and Suedeen G. Kelly.

Alfred Lima Docket Nos. CE04-253-000

CE04-255-000

# ORDER ON REQUESTS FOR CRITICAL ENERGY INFRASTRUCTURE INFORMATION

(Issued January 5, 2005)

- 1. On July 16, 2004, in Docket No. CE04-253-000, Alfred Lima submitted a request under the Commission's Critical Energy Infrastructure Information (CEII) regulations at 18 C.F.R. § 388.113(d) (3) (2004). Mr. Lima submitted his request on behalf of Green Futures, Inc., a Massachusetts corporation (Green Futures). Specifically, Mr. Lima requested the report prepared by Lloyd's Register North America, Inc. and submitted by Weaver's Cove Energy, LLC (Weaver's Cove) in the LNG application proceeding in Docket No. CP04-36-000 (Lloyd's Report). On July 19, 2004, in Docket No. CE04-255-000, Mr. Lima submitted a second request for two additional documents submitted by Weaver's Cove in the same LNG application proceeding: Report #04-07-6510-2 prepared by Quest Consultants, Inc. (Quest Report) and the Review of Casualty Data prepared by Lloyd's Register North America, Inc. (Casualty Data Report).
- 2. By letter dated July 22, 2004, the Associate General Counsel for General and Administrative Law at the time, Susan J. Court, notified Weaver's Cove of the request and provided it until August 4, 2004, to comment on these and the other CEII requests concerning the Weaver's Cove proceeding. On August 3, 2004, Weaver's Cove filed a response questioning the sufficiency of Mr. Lima's statements in support of his assertion that he has a "particular need" for the information. Weaver's Cove claimed that Mr. Lima did not explain his responsibilities for assuring the public's safety, and his particular need for the CEII in light of those responsibilities. Weaver's Cove requested that, in the event the Commission decides to release the CEII to Mr. Lima, the non-disclosure agreement should stress the commercial nature of the documents, and also restrict disclosure of the CEII to any person (including those in Mr. Lima's own organization), unless the person has also signed a non-disclosure agreement for the same information.

- 3. CEII is defined in 18 C.F.R. § 388.113(c)(1) as "information about proposed or existing critical infrastructure that (i) relates to the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; (iii) is exempt from mandatory disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. 552; and (iv) does not simply give the location of the critical infrastructure." The Lloyd's Report contains analyses of potential spill flow rates and volumes likely to arise from the damage to an LNG tanker caused by certain types of credible attacks on the ship by a third party. The Quest Report contains an assessment of possible vapor dispersion and thermal radiation hazards following such an attack. The Casualty Data Report contains a review of marine collision incidents. The Lloyd's Report and the Quest Report qualify as CEII because they contain information that could be useful to someone planning an attack on the energy infrastructure; they are exempt from mandatory disclosure under FOIA exemption 7(F); and do not merely reveal the location of the facility. Exemption 7(F) protects law enforcement records where release of the information "could reasonably be expected to endanger the life or physical safety of any individual." 5 U.S.C. § 552(b)(7)(F). We find that the information contained in these reports could be used to harm LNG tankers or related vessels or facilities, endangering the life or safety of those living, working or traveling nearby. For the foregoing reasons, the information contained in the Lloyd's Report and the Quest Report qualifies as CEII. However, we find that the Casualty Data Report does not qualify as CEII, as it merely reiterates details regarding incidents that have occurred in the past.
- 4. Although the information requested is CEII, the Commission's regulations require that the Commission balance the requester's need for the information against the sensitivity of the information. While the Commission's regulation at 18 C.F.R. § 388.113(d)(3)(i) requires that requesters assert a need and intended use of the information, the primary purpose of the rule is to ensure that CEII is disclosed only to those persons with a legitimate need for the information. Accordingly, assessing a requester's legitimacy and securing an executed non-disclosure agreement are paramount factors in determining whether or not to grant a request for CEII. In this case, Mr. Lima is a member of Green Futures, Inc., a non-profit organization based in Fall River, Massachusetts, which is concerned with environmental education and advocacy. Green Futures has been active since the mid-1990s, and has received at least one grant from the Commonwealth of Massachusetts in connection with the Taunton Heritage River Program. Moreover, Mr. Lima has stated that he needs the requested reports in order to review the Environmental Impact Statement issued by the Commission in Docket No. CP04-36-000. In addition, he has agreed to adhere to the terms of the attached non-disclosure agreement, which he submitted on September 1, 2004.

- 5. In his initial CEII applications, Mr. Lima stated that he would be "one of the reviewers for Green Futures." Commission staff contacted him and explained that any individual with Green Futures who will review the CEII is required to submit in advance a separate CEII request, non-disclosure agreement, and initialed provisions. By e-mail dated September 28, 2004, he clarified that he would be one of the Green Futures reviewers of the Commission's Environmental Impact Statement; but that he would be the sole Green Futures reviewer of the requested CEII.
- 6. Based on the foregoing, we conclude that Mr. Lima is a legitimate requester with a demonstrated need for the information requested. Therefore we are releasing the Quest Report to him in full, subject to the non-disclosure agreement he signed on September 1, 2004. In addition, we are releasing the Casualty Data Report as a public document, not subject to the non-disclosure agreement. We believe that the security risk associated with portions of the Lloyd's Report is significant. For this reason, we have made redactions to the Lloyd's Report regarding specific methods of attacking a LNG tanker. We find that Mr. Lima's legitimate interest in the Lloyd's Report does not outweigh the potential harm of releasing this information. In addition, we do not anticipate that these redactions will unduly hamper Mr. Lima's ability to review the Environmental Impact Statement. Finally, we remind Mr. Lima that pursuant to the terms of the non-disclosure agreement, and notwithstanding the fact that some of the requested material has been redacted, he is prohibited from disclosing the CEII to any person not otherwise covered by an agency non-disclosure agreement covering this same information.
- 7. This Order provides notice that the requested Lloyd's Report, Quest Report, and Casualty Report will be released in accordance with this order no sooner than five calendar days after the date this order is issued. *See* 18 C.F.R. § 388.112(e) (2004).

#### The Commission orders:

Mr. Albert Lima's request in Docket No. CE04-253-000 is granted in part and denied in part, as described in the body of this order. Mr. Lima's request in Docket No. CE04-255-000 is granted in full. This order is subject to rehearing pursuant to 18 C.F.R. § 385.713.

By the Commission.

(SEAL)

Linda Mitry, Deputy Secretary.

### CRITICAL ENERGY INFRASTRUCTURE INFORMATION **GREEN FUTURES, INC. PROVISIONS**

- These provisions govern the use of Critical Energy Infrastructure Information (CEII) 1. provided to a Requester who, on behalf of Green Futures, Inc., files a request for access to CEII pursuant to 18 C.F.R. 1 388.113.
- 2. Definitions B For purposes of these provisions:
  - The term "CEII Coordinator" refers to the Federal Energy Regulatory Commission a. official designated as Critical Energy Infrastructure Information Coordinator, with delegated authority under 18 C.F.R. 375.313 to make determinations with respect to requests for CEII.
  - b. The term "Green Futures Requester" means someone who requests access to CEII on behalf of Green Futures, Inc., in accordance with the provisions of 18 C.F.R. ' 388.113(d).
  - The terms "non-disclosure agreement" and "NDA" mean the agreement annexed C. hereto by which the Green Futures Requester certifies his or her understanding that access to CEII is provided solely pursuant to the terms and restrictions of these provisions, and that such Green Futures Requester has read the provisions and agrees to be bound by them.
  - The term "Recipient" means someone who receives CEII in accordance with the d. provisions of 18 C.F.R. ' 388.113.
- 3. A Green Futures Requester shall not be permitted to inspect or gain access to CEII unless the Green Futures Requester has first executed a Green Futures non-disclosure agreement.
- 4. Any information provided under this agreement is on loan to Green Futures, Inc., and must be returned to the Federal Energy Regulatory Commission upon request. This information is not the property of Green Futures, Inc., and is not subject to State Freedom of Information/Public Records acts or similar statutes.
- 5. The Green Futures Requester agrees to notify the Federal Energy Regulatory Commission Associate General Counsel for General Law immediately upon the receipt by Green Futures, Inc. of a request for the information provided under this agreement.

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- This information will be returned to the CEII Coordinator prior to the Green Futures 6. Requester leaving the employment of Green Futures, Inc.
- A Recipient may discuss CEII with any other Recipient of the identical CEII. A 7. Recipient may check with the CEII Coordinator to determine whether another individual is a Recipient of the identical CEIL
- If a Recipient submits information to the Commission that includes CEII obtained under 8. these provisions, portions of the filing containing CEII must be submitted in accordance with 18 C.F.R. 388.112(b), including, among other requirements, clearly marking every page of the submission that contains CEII.
- 9. All CEII shall be maintained by Recipient in a secure place. Access to those materials shall be strictly limited to other Recipients of the identical material. Recipients may make copies of CEII, but such copies become CEII and subject to these same procedures and restrictions. Recipients may make notes of CEII, which shall be treated as CEII if they contain CEII.
- Recipients must return CEII to the CEII Coordinator or destroy CEII immediately upon receipt of a written request to do so by the CEII Coordinator or his designee. Within such time period, each Recipient, if requested to do so, shall also submit to the CEII Coordinator an affidavit stating that, to the best of its knowledge, all CEII has been either returned or destroyed, and that likewise all CEII notes have been either returned or destroyed.
- 11. The Recipient remains bound by these provisions unless the CEII Coordinator or the Commission rescinds the provisions or a court of competent jurisdiction finds that the information does not qualify as CEII. The Recipient acknowledges that failure to adhere to these provisions will compromise public health and safety as well as national security, by increasing the vulnerability of the United States.

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### CEII NON-DISCLOSURE AGREEMENT GREEN FUTURES, INC.

I hereby certify my understanding that access to Critical Energy Infrastructure

Information (CEII) is provided to me pursuant to the terms and restrictions of the attached

Green Futures, Inc. CEII Provisions, that I have been given a copy of and have read the

Green Futures, Inc. CEII Provisions, and that I agree to be bound by them. I understand
that the contents of the CEII, any notes or other memoranda, or any other form of
information that copies or discloses CEII are subject to the Provisions and shall not be
disclosed to anyone other than another person who has been granted access to these same
materials by the Federal Energy Regulatory Commission. I acknowledge that, if I violate
this agreement, I could jeopardize national security and public health and safety.

By:

Tiela.

Green Futures, Inc.:

Date:

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